

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

File No. 11-2007-181346

JERRY S. GARCIA, M.D.

Physician's and Surgeon's  
Certificate No. G 86442

Respondent.

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision and Order by the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on January 3, 2011.

DATED December 2, 2010

MEDICAL BOARD OF CALIFORNIA



Shelton Duruisseau, Ph.D.  
Chair, Panel A

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 THOMAS S. LAZAR  
Supervising Deputy Attorney General  
3 HEIDI R. WEISBAUM  
Deputy Attorney General  
4 State Bar No. 101489  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2098  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*  
8

9  
10 **BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**  
11

12 In the Matter of the First Amended Accusation  
Against:

13 **JERRY S. GARCIA, M.D.**  
14 1491 E. La Palma Avenue, Suite C  
Anaheim, CA 92805  
15

16 Physician's and Surgeon's Certificate No.  
G86442  
17

18 Respondent.

Case Nos. 11-2007-181346; 11-2009-198851

OAH No. 2009080294

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Barbara Johnston (Complainant) is the Executive Director of the Medical Board of  
23 California. She brought this action solely in her official capacity and is represented in this matter  
24 by Edmund G. Brown Jr., Attorney General of the State of California, by Heidi R. Weisbaum,  
25 Deputy Attorney General.

26 2. Jerry S. Garcia, M.D. (Respondent) is represented in this proceeding by attorney  
27 Raymond J. McMahon, Esq., whose address is 1851 E. First Street, Suite 810, Santa Ana,  
28 California 92705-4041.

3. On March 20, 2002, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G86442 to Respondent. The Certificate was in full force and effect at all relevant times and will expire on February 29, 2010, unless renewed.

## JURISDICTION

4. On July 23, 2009, the Board filed and served Accusation No. 11-2007-181346, and all other statutorily required documents on Respondent. Respondent timely filed his Notice of Defense contesting the Accusation. On January 5, 2010, a First Amended Accusation Nos. 11-2007-181346, 11-2009-198851, was filed before the Board and is currently pending against Respondent. A true and correct copy of First Amended Accusation Nos. 11-2007-181346, 11-2009-198851, is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation No. 11-2007-181346, 11-2009-198851. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in paragraphs 6 through 9, and their subparagraphs, in First Amended Accusation No. 11-2007-181346, 11-2009-198851.

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations in paragraphs 10 and 11, and their subparagraphs, in First Amended Accusation No. 11-2007-181346, and that he has thereby subjected his Physician's and Surgeon's Certificate No. G86442 to disciplinary action.

Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in First Amended Accusation No. 11-2007-181346, shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

10. Respondent agrees that his Physician's and Surgeon's Certificate No. G86442 is subject to discipline and further agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

## CONTINGENCY

11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it.

12. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving respondent. In the event that the Board, in its discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent

1 further agrees that should the Board reject this Stipulated Settlement and Disciplinary Order for  
2 any reason, Respondent will assert no claim that the Board, or any member thereof, was  
3 prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and  
4 Disciplinary Order or of any matter or matters related hereto.

5 ADDITIONAL PROVISIONS

6 13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to  
7 be an integrated writing representing the complete, final and exclusive embodiment of the  
8 agreements of the parties in the above-entitled matter.

9 14. The parties agree that facsimile copies of this Stipulated Settlement and Disciplinary  
10 Order, including facsimile signatures of the parties, may be used in lieu of original documents and  
11 signatures and, further, that facsimile copies shall have the same force and effect as originals.

12 15. In consideration of the foregoing admissions and stipulations, the parties agree the  
13 Board may, without further notice to or opportunity to be heard by Respondent, issue and enter  
14 the following Disciplinary Order:

15 DISCIPLINARY ORDER

16 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G86442, issued  
17 to Respondent Jerry Garcia, M.D., is revoked. However, the revocation is stayed and  
18 Respondent is placed on probation for a period of seven (7) years on the following terms and  
19 conditions:

20 1. CLINICAL TRAINING PROGRAM Within 60 calendar days of the effective date  
21 of this Decision, Respondent shall enroll in a clinical training or educational program equivalent  
22 to the Physician Assessment and Clinical Education Program (PACE) offered at the University of  
23 California - San Diego School of Medicine ("Program").

24 The Program shall consist of a Comprehensive Assessment program comprised of a two-  
25 day assessment of respondent's physical and mental health; basic clinical and communication  
26 skills common to all clinicians; and medical knowledge, skill and judgment pertaining to  
27 respondent's specialty or sub-specialty, and at minimum, a 40 hour program of clinical education  
28 in the area of practice in which Respondent was alleged to be deficient and which takes into

1 account data obtained from the assessment, Decision(s), Accusation(s), and any other information  
2 that the Board or its designee deems relevant. Respondent shall pay all expenses associated with  
3 the clinical training program.

4 Based on Respondent's performance and test results in the assessment and clinical  
5 education, the Program will advise the Board or its designee of its recommendation(s) for the  
6 scope and length of any additional educational or clinical training, treatment for any medical  
7 condition, treatment for any psychological condition or anything else affecting Respondent's  
8 practice of medicine. Respondent shall comply with Program recommendations.

9 At the completion of any additional educational or clinical training, respondent shall submit  
10 to and pass an examination. The Program's determination whether or not respondent passed the  
11 examination or successfully completed the Program shall be binding.

12 Respondent shall complete the Program not later than six months after his initial enrollment  
13 unless the Board or its designee agrees in writing to a later time for completion.

14 Condition Precedent: Respondent shall not practice medicine until he has successfully  
15 completed the Program and has been so notified by the Board or its designee in writing, except  
16 that Respondent may practice in a clinical training program approved by the Board or its  
17 designee. Respondent's practice of medicine shall be restricted only to that which is required by  
18 the approved training program.

19 Failure to participate in and complete successfully all phases of the clinical training  
20 program outlined above is a violation of probation.

21 2. MEDICAL RECORD KEEPING COURSE Within 60 calendar days of the effective  
22 date of this decision, Respondent shall enroll in a course in medical record keeping, at his  
23 expense, approved in advance by the Division or its designee. Failure to successfully complete  
24 the course during the first six (6) months of probation is a violation of probation.

25 A medical record keeping course taken after the acts that gave rise to the charges in the  
26 First Amended Accusation, but prior to the effective date of the Decision may, in the sole  
27 discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the

28 ///

1 course would have been approved by the Board or its designee had the course been taken after the  
2 effective date of this Decision.

3 Respondent shall submit a certification of successful completion to the Board or its  
4 designee not later than 15 calendar days after successfully completing the course, or not later than  
5 15 calendar days after the effective date of the Decision, whichever is later.

6 3. ETHICS COURSE Within 60 calendar days of the effective date of this Decision,  
7 Respondent shall enroll in a course in ethics, at his expense, approved in advance by the Board or  
8 its designee. Failure to successfully complete the course during the first year of probation is a  
9 violation of probation.

10 An ethics course taken after the acts that gave rise to the charges in the Accusation, but  
11 prior to the effective date of the Decision may, in the sole discretion of the Board or its designee,  
12 be accepted towards the fulfillment of this condition if the course would have been approved by  
13 the Board or its designee had the course been taken after the effective date of this Decision.

14 Respondent shall submit a certification of successful completion to the Board or its  
15 designee not later than 15 calendar days after successfully completing the course, or not later than  
16 15 calendar days after the effective date of the Decision, whichever is later.

17 4. EDUCATION COURSE Within 60 calendar days of the effective date of this  
18 Decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee  
19 for its prior approval, educational program(s) or course(s) which shall not be less than 40 hours  
20 per year, for each year of probation. The educational program(s) or course(s) shall be aimed at  
21 correcting any areas of deficient practice or knowledge and shall be Category I certified, limited  
22 to classroom, conference, or seminar settings. The educational program(s) or course(s) shall be at  
23 respondent's expense and shall be in addition to the Continuing Medical Education (CME)  
24 requirements for renewal of licensure. Following the completion of each course, the  
25 Board or its designee may administer an examination to test Respondent's knowledge of the  
26 course. Respondent shall provide proof of attendance for 65 hours of continuing medical  
27 education of which 40 hours were in satisfaction of this condition.

28 ///

1           5.    PROHIBITED PRACTICE During probation, Respondent is prohibited from  
2 practicing unless he has a specific physician who will provide coverage for Respondent's patients  
3 should Respondent be unable, for any reason, to attend to and care for his own patients. The  
4 name and contact information for the physician shall be known to Respondent's office personnel  
5 and to any and all hospital personnel where Respondent has staff privileges. Failure to have a  
6 specific physician to provide coverage for Respondent at all times when he is practicing medicine  
7 constitutes a violation of probation.

8           6.    MONITORING - PRACTICE/BILLING Within 30 calendar days of the effective  
9 date of this Decision, respondent shall submit to the Board or its designee for prior approval as a  
10 practice monitor, the name and qualifications of one or more licensed physicians and surgeons  
11 whose licenses are valid and in good standing, and who are preferably American Board of  
12 Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or  
13 personal relationship with Respondent, or other relationship that could reasonably be expected to  
14 compromise the ability of the monitor to render fair and unbiased reports to the Board, including,  
15 but not limited to, any form of bartering, shall be in Respondent's field of practice, and must  
16 agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

17           The Board or its designee shall provide the approved monitor with copies of the Decision  
18 and First Amended Accusation, and a proposed monitoring plan. Within 15 calendar days of  
19 receipt of the Decision, First Amended Accusation, and proposed monitoring plan, the monitor  
20 shall submit a signed statement that the monitor has read the Decision and First Amended  
21 Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed  
22 monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall  
23 submit a revised monitoring plan with the signed statement.

24           Within 60 calendar days of the effective date of this Decision, and continuing throughout  
25 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall  
26 make all records available for immediate inspection and copying on the premises by the monitor  
27 at all times during business hours, and shall retain the records for the entire term of probation.

28    ///



1 The monitor(s) shall submit a quarterly written report to the Board or its designee which  
2 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
3 are within the standards of practice of medicine or billing, or both, and whether respondent is  
4 practicing medicine safely, billing appropriately or both.

5 It shall be the sole responsibility of Respondent to ensure that the monitor submits the  
6 quarterly written reports to the Board or its designee within 10 calendar days after the end of the  
7 preceding quarter.

8 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of  
9 such resignation or unavailability, submit to the Board or its designee, for prior approval, the  
10 name and qualifications of a replacement monitor who will be assuming that responsibility within  
11 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 days  
12 of the resignation or unavailability of the monitor, Respondent shall be suspended from the  
13 practice of medicine until a replacement monitor is approved and prepared to assume immediate  
14 monitoring responsibility. Respondent shall cease the practice of medicine within 3 calendar  
15 days after being so notified by the Board or designee.

16 Failure to maintain all records, or to make all appropriate records available for immediate  
17 inspection and copying on the premises, or to comply with this condition as outlined above is a  
18 violation of probation.

19 7. NOTIFICATION Prior to engaging in the practice of medicine, Respondent shall  
20 provide a true copy of the Decision and First Amended Accusation to the Chief of Staff or the  
21 Chief Executive Officer at every hospital where privileges or membership are extended to  
22 Respondent, at any other facility where Respondent engages in the practice of medicine,  
23 including all physician and locum tenens registries or other similar agencies, and to the Chief  
24 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
25 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15  
26 calendar days.

27 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

28 ///

1        8.    SUPERVISION OF PHYSICIAN ASSISTANTS During probation, Respondent is  
2 prohibited from supervising physician assistants.

3        9.    OBEY ALL LAWS Respondent shall obey all federal, state and local laws, all rules  
4 governing the practice of medicine in California, and remain in full compliance with any court  
5 ordered criminal probation, payments and other orders.

6        10. QUARTERLY DECLARATIONS Respondent shall submit quarterly declarations  
7 under penalty of perjury on forms provided by the Board, stating whether there has been  
8 compliance with all the conditions of probation. Respondent shall submit quarterly declarations  
9 not later than 10 calendar days after the end of the preceding quarter.

10       11. PROBATION UNIT COMPLIANCE Respondent shall comply with the Board's  
11 probation unit. Respondent shall, at all times, keep the Board informed of his business and  
12 residence addresses. Changes of such addresses shall be immediately communicated in writing to  
13 the Board or its designee. Under no circumstances shall a post office box serve as an address of  
14 record, except as allowed by Business and Professions Code section 2021(b).

15       Respondent shall not engage in the practice of medicine in his place of residence.  
16 Respondent shall maintain a current and renewed California physician's and surgeon's license.

17       Respondent shall immediately inform the Board, or its designee, in writing, of travel to any  
18 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30  
19 calendar days.

20       12. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall be  
21 available in person for interviews either at Respondent's place of business or at the probation unit  
22 office, with the Board or its designee, upon request at various intervals, and either with or without  
23 prior notice throughout the term of probation.

24       13. RESIDING OR PRACTICING OUT-OF-STATE In the event Respondent should  
25 leave the State of California to reside or to practice, Respondent shall notify the Board or its  
26 designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is  
27 defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in  
28 any activities defined in Sections 2051 and 2052 of the Business and Professions Code.

1 All time spent in an intensive training program outside the State of California which has  
2 been approved by the Board or its designee shall be considered as time spent in the practice of  
3 medicine within the State. A Board-ordered suspension of practice shall not be considered as a  
4 period of non-practice. Periods of temporary or permanent residence or practice outside  
5 California will not apply to the reduction of the probationary term. Periods of temporary or  
6 permanent residence or practice outside California will relieve Respondent of the responsibility to  
7 comply with the probationary terms and conditions with the exception of this condition and the  
8 following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and  
9 Cost Recovery.

10 Respondent's license shall be automatically cancelled if Respondent's periods of temporary  
11 or permanent residence or practice outside California total two years. However, Respondent's  
12 license shall not be cancelled as long as Respondent is residing and practicing medicine in  
13 another state of the United States and is on active probation with the medical licensing authority  
14 of that state, in which case the two year period shall begin on the date probation is completed or  
15 terminated in that state.

16 14. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

17 In the event Respondent resides in the State of California and for any reason Respondent  
18 stops practicing medicine in California, Respondent shall notify the Board or its designee in  
19 writing within 30 calendar days prior to the dates of non-practice and return to practice. Any  
20 period of non-practice within California, as defined in this condition, will not apply to the  
21 reduction of the probationary term and does not relieve Respondent of the responsibility to  
22 comply with the terms and conditions of probation. Non-practice is defined as any period of time  
23 exceeding 30 calendar days in which Respondent is not engaging in any activities defined in  
24 sections 2051 and 2052 of the Business and Professions Code.

25 All time spent in an intensive training program which has been approved by the Board or its  
26 designee shall be considered time spent in the practice of medicine. For purposes of this  
27 condition, non-practice due to a Board-ordered suspension or in compliance with any other  
28 condition of probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically cancelled if Respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

15. PROBATION MONITORING COSTS Respondent shall pay the costs associated with probation monitoring each and every year of probation, as set by the Board, and which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

16. VIOLATION OF PROBATION Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

17. COMPLETION OF PROBATION Respondent shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

18. LICENSE SURRENDER Following the effective date of this Decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of his license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall, within 15 calendar days, deliver his wallet and wall certificates to the Board or its designee and shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of his license shall be deemed disciplinary action. If

Respondent reapplies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

ACCEPTANCE

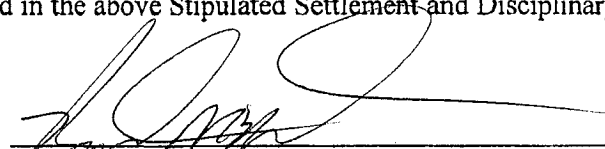
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Raymond J. McMahon, Esq. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G86442. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 11/11/10

  
JERRY S. GARCIA, M.D.  
Respondent

I have read and fully discussed with Respondent Jerry S. Garcia, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: November 15, 2010

  
RAYMOND J. MCMAHON, ESQ.  
Attorney for Respondent

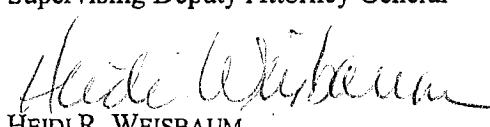
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California of the Department of Consumer Affairs.

DATED: November 22, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.  
Attorney General of California  
THOMAS S. LAZAR  
Supervising Deputy Attorney General

  
HEIDI R. WEISBAUM  
Deputy Attorney General  
Attorneys for Complainant

**Exhibit A**

**First Amended Accusation No. 11-2007-181346**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 STEVEN V. ADLER  
Supervising Deputy Attorney General  
3 HEIDI R. WEISBAUM  
Deputy Attorney General  
4 State Bar No. 101489  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2098  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO January 5 20 10  
BY Valerie Mon ANALYST

9 **BEFORE THE**  
10 **MEDICAL BOARD OF CALIFORNIA**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation  
13 Against:

14 **JERRY S. GARCIA, M.D.**  
1491 E. La Palma Ave., Ste. C  
15 Anaheim, CA 92805

16 Physician's and Surgeon's Certificate  
17 No. G86442

18 Respondent.

Case Nos. 11-2007-181346; 11-2009-198851

OAH No. 2009080294

**FIRST AMENDED ACCUSATION**

19 Complainant alleges:

20 **PARTIES**

21 1. Barbara Johnston (Complainant) brings this First Amended Accusation solely in her  
22 official capacity as the Executive Director of the Medical Board of California, Department of  
23 Consumer Affairs.

24 2. On or about March 20, 2002, the Medical Board issued Physician's and Surgeon's  
25 Certificate Number G 86442 to Jerry S. Garcia, M.D. (Respondent). The Certificate was in full  
26 force and effect at all relevant times and will expire on February 28, 2010, unless renewed.

27 ///

JURISDICTION

3. This First Amended Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 states:

"The [Board] shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

". . . .



1 (e) The commission of any act involving dishonesty or corruption which is substantially  
2 related to the qualifications, functions, or duties of a physician and surgeon."

3 "..."

4 FIRST CAUSE FOR DISCIPLINE

5 (Gross Negligence)

6 6. Respondent is subject to disciplinary action under section 2234, subdivision (b), in  
7 that he committed gross negligence, as more particularly set forth below.

8 JULY 21, 2006

9 A. On July 21, 2006, at about 0222, V.A., a 34 year old primigravida with an expected  
10 due date of August 11, 2006, was admitted in active labor to Garden Grove Hospital, stating her  
11 membranes had ruptured at 0100; she was at 37 weeks gestation. At about 0300, Respondent was  
12 notified by telephone of her admission and issued orders, which included fetal monitoring, an  
13 epidural as needed, the initiation of Pitocin, and blood work. The lab results showed normal  
14 clotting studies, normal hemoglobin of 12.7, and normal hematocrit of 36.1.

15 B. At about 0615, V.A. was given an epidural by the anesthesiologist. At the time, V. A.  
16 was dilated to 5, 100% effaced, and the fetus was at -1 station.

17 C. At about 0815, Respondent was given a phone report of V.A.'s condition by one of  
18 the nurses. At about 0850, she was allowed to begin pushing with contractions. At the time, she  
19 was completely dilated and effaced, and the fetus was at either 0 or +1 station.

20 D. At about 0920, Respondent saw and evaluated V.A., reviewed the fetal monitoring  
21 strip, and decided to allow V.A. to continue to labor.

22 E. At 1330, V.A. was pushing well, but the baby was still at +1 and not moving.

23 F. At about 1415, one of the nurses telephoned Respondent to inform him of V.A.'s  
24 condition, and he issued a new order to stop the Pitocin because a primary Cesarean section was  
25 to be done at 1730.

26 G. At 1750, V.A. was taken to the operating room for the Cesarean section. At 1800,  
27 Respondent wrote a progress note that a Cesarean section would be done because V.A. had still  
28 not progressed. At 1805, Respondent dictated the history and physical report. At 1812, he began

1 the surgery and at 1815, a healthy baby girl was delivered. At 1836, Respondent dictated his  
2 operative report, indicating there were no problems and estimating the blood loss at 1000 ml.  
3 After saying goodbye to V.A. in the recovery room, Respondent left the hospital for his home.

4 H. At about 1840, V.A. was taken to the recovery room in stable condition, with routine  
5 post-Cesarean section orders. At about 2020, she was moved to the postpartum floor; her pulse  
6 was 131 and her blood pressure was 93/41.

7 I. At 2150, the nurse contacted Respondent by phone and informed him V.A.'s blood  
8 pressure was 65/38. A Foley catheter was in place and her urine output was 10cc. Her pulse was  
9 110. Respondent gave a telephone order for an IV infusion of 1000cc, but did not come to the  
10 hospital.

11 J. At 2215, the nurse contacted Respondent again by phone to report the blood pressure  
12 was still low, 66/43, and suggested he come to the hospital to see V.A. Respondent ordered an  
13 infusion of 2000cc and a stat hematocrit and hemoglobin, but did not come to the hospital. The  
14 nurse called respiratory therapy to evaluate V.A. At 2230, the respiratory therapist noted V.A.  
15 had mild shortness of breath and a heart rate of 142. Her urine output from the catheter was 75cc.  
16 Respondent was notified of V.A.'s status, but did not come to the hospital.

17 K. At 2335, the lab informed the nurse V.A.'s hemoglobin was 5.3, and the hematocrit  
18 was 15.1. The nurse telephoned Respondent who ordered two units of red blood cells to be typed,  
19 cross-matched, and transfused. Respondent did not come to the hospital to see V.A. The nurse  
20 noted that V.A. was pale and restless with a blood pressure of 63/50, and called a code blue for  
21 assistance with V.A.'s care.

22 L. The emergency room physician responded immediately. Respondent was called and  
23 told about V.A.'s condition and the code blue call. The emergency room physician stabilized  
24 V.A., gave orders for additional blood transfusions, spoke to Respondent about V.A.'s condition,  
25 and suggested V.A. needed more close monitoring. Respondent ordered V.A. transferred to the  
26 ICU. Once V.A. was stable, the emergency room physician returned to the emergency room.

27 ///

28 ///

1           **JULY 22, 2006**

2           M.    On July 22, 2006, at 0031, V.A. was transferred to the ICU. The monitor showed  
3 V.A. had an SVT rate of 170-183, blood pressure of 73/45, and was very pale. She had two IVs  
4 running, one in her right wrist with the blood transfusion and one in her left wrist for fluid. At  
5 0037, Respondent was called and notified about V.A.'s restlessness, heart rate and low blood  
6 pressure, and issued an order for a Levophed drip for blood pressure less than 90; he did not come  
7 to the hospital.

8           N.    At 0104, V.A. became unresponsive and stopped breathing. Another code blue was  
9 called and the emergency room physician returned to provide treatment, along with the code  
10 team. The team worked on resuscitating V.A. for close to an hour, during which Respondent was  
11 paged and/or called several times. At 0154, the code team stopped their emergency measures and  
12 V.A. was pronounced dead. Respondent did not arrive at the hospital until 0200.

13          7.    Respondent is subject to disciplinary action under section 2234, subdivision (b), in  
14 that he committed gross negligence as follows:

15          A.    Respondent failed to go to the hospital to directly see and attend to V.A., a critically  
16 ill patient, and instead attempted to telephonically manage her care.

17          B.    Respondent failed to recognize impending hypovolemic shock when notified of  
18 V.A.'s low urine output and rising heart rate over 130.

19          C.    Respondent failed to recognize a rising heart rate, a falling blood pressure and no  
20 increased external bleeding as signs of internal bleeding.

21          D.    Respondent failed to go to the hospital after being informed V.A.'s hemoglobin was  
22 5.3, her hematocrit was 15.1, her blood pressure was 60/37, and her heart rate was 160.  
23 Respondent failed to transfer V.A. to the ICU, and failed to order a central line, a CVP, or a rapid  
24 transfusion of O Rh negative blood; he further failed to order FFP or cryoprecipitate or to inquire  
25 about the availability of platelets; and, he also failed to obtain clotting studies or an ultrasound to  
26 determine the cause of the bleeding.

27        ///

28        ///

1 E. Respondent failed to go to the hospital after the first code was called and the  
2 emergency room physician requested the patient be transferred to the ICU. Respondent ordered  
3 the transfer but failed to initiate any plan of treatment for the ICU staff to follow.

4 F. Respondent failed to consider taking V.A. back to the operating room for exploratory  
5 surgery to determine the cause of the bleeding.

## 6 SECOND CAUSE FOR DISCIPLINE

### 7 (Incompetence)

8 8. Respondent is subject to disciplinary action under section 2234, subdivision (d), in  
9 that he demonstrated incompetence, as follows:

10 A. Paragraph 6 and each of its subparts are incorporated in their entirety.

11 B. Respondent failed to go to the hospital to directly see and attend to V.A., a critically  
12 ill patient, and instead attempted to telephonically manage her care.

13 C. Respondent failed to recognize impending hypovolemic shock when notified of  
14 V.A.'s low urine output and rising heart rate over 130.

15 D. Respondent failed to recognize a rising heart rate, a falling blood pressure and no  
16 increased external bleeding as signs of internal bleeding.

17 E. When told V.A.'s abdomen was not distended, Respondent failed to recognize and  
18 consider that blood can be sequestered in large amounts without changes to the abdomen.

19 F. When V.A.'s hemoglobin and hematocrit were 5.3 and 15.1, respectively, Respondent  
20 failed to transfer V.A. to the ICU, and failed to order a central line, or to measure her CVP, or to  
21 order a rapid transfusion of O Rh negative blood; he further failed to order FFP or cryoprecipitate  
22 or to inquire about the availability of platelets; he also failed to obtain clotting studies or an  
23 ultrasound to determine the cause of the bleeding; he additionally failed to consider starting a big  
24 bore IV line for a possible transfusion.

25 G. Respondent ordered the transfer to the ICU. but failed to initiate any plan of treatment  
26 for the ICU staff to follow.

27 H. Respondent failed to consider taking V.A. back to the operating room for exploratory  
28 surgery to determine the cause of the bleeding.

1 THIRD CAUSE FOR DISCIPLINE

2 (Repeated Negligent Acts)

3 9. Respondent is subject to disciplinary action under section 2234, subdivision (c), in  
4 that he committed repeated negligent acts as set forth in paragraphs 6 and 7 and each of their  
5 subparts, above.

6 FOURTH CAUSE FOR DISCIPLINE

7 (Dishonesty)

8 10. Respondent is subject to disciplinary action under section 2234, subdivision (e), in  
9 that he committed dishonesty, as set forth below:

10 A. From about December 20, 2006 to about January 2, 2007, Respondent's staff  
11 privileges at Garden Grove Hospital and Medical Center (GGHMC) were suspended, in part as a  
12 result of the conduct alleged in paragraphs 6.A. through 6.N., above. After January 2, 2007,  
13 Respondent voluntarily agreed not to practice at GGHMC pending completion of the medical  
14 staff hearing process. On about March 16, 2007, GGHMC was notified that Respondent decided  
15 not to proceed with the hearing process and instead to resign from the GGHMC medical staff.

16 B. On February 2, 2008, Respondent answered, "No" to the following questions on an  
17 application for privileges with Monarch Health Care (Monarch):

18 "XII. ATTESTATION QUESTIONS

19 " . . . .

20 "D. Have your clinical privileges, membership, contractual participation or  
21 employment by any medical organization (e.g. hospital medical staff,  
22 medical group, independent practice association (IPA), health plan, health  
23 maintenance organization (HMO), preferred provider organization (PPO),  
24 private payer (including those that contract with public programs), medical  
25 society professional association, medical school faculty position or other  
26 health delivery entity or system), ever been denied, suspended, restricted,  
27 reduced, subject to probationary conditions, revoked or not renewed for  
28

1 possible incompetence, improper professional conduct or breach of contract,  
2 or is any such action pending?

3 "E. Have you ever surrendered, allowed to expire, voluntarily or  
4 involuntarily withdrawn a request for membership or clinical privileges,  
5 terminated contractual participation or employment, or resigned from any  
6 medical organization (e.g., hospital medical staff, medical group,  
7 independent practice association (IPA), health plan, health maintenance  
8 organization (HMO), preferred provider organization (PPO), medical  
9 society, professional association, medical school faculty position or other  
10 health delivery entity or system) while under investigation for possible  
11 incompetence or improper professional conduct, or breach of contract, or in  
12 return for such an investigation not being conducted, or is any such action  
13 pending?

14 " . . . ."

15 C. On October 2, 2008, the Board served Respondent with three subpoenas duces tecum  
16 for medical records for three patients, one of whom was patient V.A., the patient in the  
17 allegations in paragraphs 6.A. through 6. N., above.

18 D. On October 25, 2008, Respondent wrote a letter to Monarch explaining what occurred  
19 at GGHMC, and stating GGHMC began an investigation of him that he "was going to fight all the  
20 way but . . . [he instead] decided that [he] would resign." Respondent further stated he "was  
21 never sued on the case nor [had he] ever been investigated since by the Medical Board or any  
22 other entity."

23 E. On October 29, 2008, Respondent wrote a second letter to Monarch, in which he  
24 requested a hearing with Monarch because he wanted to remain credentialed by Monarch. In the  
25 letter, Respondent repeated the statements alleged in paragraph 10.D., above, and added that an  
26 "805 [Report had been filed against him] but [he had] been cleared and nothing ever came of it."

27 F. On December 1, 2008, Respondent was sent a letter informing him the Board was  
28 investigating the care he provided to five patients and requesting a date for an interview.

1 G. On about December 17, 2008, the Board's investigator contacted Respondent by  
2 telephone, scheduled an interview with him for January 21, 2009, and sent a confirming letter to  
3 him. Respondent subsequently requested the date be changed.

4 H. On about February 5, 2009, Respondent was served with an investigational subpoena  
5 to appear for an interview with the Board's investigator on March 3, 2009.

6 I. On February 26, 2009, the Monarch hearing took place. Respondent testified that the  
7 Board had investigated him and found nothing.

8 J. On March 3, 2009, Respondent was interviewed by the Board. During the interview,  
9 Respondent acknowledged being aware of the subpoenas for the medical records soon after the  
10 subpoenas were served on his office and being aware (at the time of the Monarch hearing) of the  
11 Board interview set for the week after the Monarch hearing.

12 11. Respondent is subject to disciplinary action under section 2234, subdivision (e), in  
13 that he committed dishonesty, as set forth below:

14 A. Paragraphs 10.A. through 10.J., above are incorporated herein.

15 B. Respondent dishonestly failed to inform Monarch in his privileges application that he  
16 had been suspended from GGHMC, in part for the conduct alleged in paragraphs 6.A. through  
17 6.N., above, that he voluntarily agreed not to practice at GGHMC pending the investigation, and  
18 that he subsequently decided to resign while the investigation was pending.

19 C. Respondent dishonestly failed to inform Monarch at the February hearing about his  
20 upcoming interview with the Board and that the Board had subpoenaed his medical records  
21 regarding five patients.

22 D. Respondent dishonestly testified at the Monarch hearing that he had been investigated  
23 by the Board, that the Board had found nothing, and that the Board had cleared him of any  
24 unprofessional conduct.

25 ///

26 ///

27 ///


28 ///

PRAYER

WHEREFORE. Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 86442, issued to Jerry S. Garcia, M.D..
2. Revoking, suspending or denying approval of Jerry S. Garcia, M.D.'s authority to supervise physician's assistants, if any, pursuant to section 3527 of the Code;
3. Ordering Jerry S. Garcia, M.D., if placed on probation, to pay the Medical Board of California the costs of probation monitoring; and,
4. Taking such other and further action as deemed necessary and proper.

DATED: January 5, 2010

  
BARBARA JOHNSTON  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*